

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JESSE DERRICK BOND,	)	
	)	2:06cv1515
Plaintiff,	)	Electronic Filing
	)	
v.	)	Judge Cercone
	)	Magistrate Judge Caiazza
FNU RHODES, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**MEMORANDUM ORDER**

Jesse Derrick Bond's civil rights complaint was received by the Clerk of Court on November 14, 2006, and was referred to United States Magistrate Judge Francis X. Caiazza for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation, filed on February 8, 2008, recommended that the Motion to Dismiss filed by Defendants Diggs, Gress and Hickman (Doc.63) be granted in part and denied in part, and that the Plaintiff's Motion to Strike the Motion to Dismiss as untimely (Doc. 88) and his Motion for Sanctions (Doc. 90) be denied. The parties were allowed ten days from the date of service of the report to file objections. The Plaintiff filed objections on February 26, 2008 (Docs. 97 and 98).

After de novo review of the pleadings and documents in the case, together with the Report and Recommendation and the objections thereto, the following order is entered:

AND NOW, this 20<sup>th</sup> day March, 2008,

IT IS HEREBY ORDERED that the Motion to Dismiss filed by Defendants Diggs, Gress and Hickman (Doc. 63) is GRANTED IN PART AND DENIED IN PART as set forth with more particularity in the Magistrate Judge's Report and Recommendation.

IT IS FURTHER ORDERED that the Plaintiff's Motion to Strike the Motion to Dismiss as untimely (Doc. 88), and his Motion for Sanctions (Doc. 90), are DENIED.

The Report and Recommendation of Magistrate Judge Caiazza, (Doc. 95), dated February 8, 2008, as augmented herein is adopted as the opinion of the court.

Plaintiff's objections are without merit. Plaintiffs amended complaint was not filed until leave was granted on July 11, 2007, and thus Rule 15(c) has no application to plaintiff's motion to strike. And contrary to plaintiff's arguments concerning the application of Rule 15(a), defendants did not fail to file a responsive pleading to plaintiff's amended complaint in a timely manner. Accordingly, plaintiff's motion to strike properly is denied.

s/David Stewart Cercone  
David Stewart Cercone  
United States District Judge

cc: Honorable Francis X. Caiazza  
United States Magistrate Judge

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